families and, by the way, it will also help the banking institutions because they will lose less money if they have a person paying their mortgage on time. That policy will be at stake if we do not pass the EXPIRE Act.

Another issue I have been working on personally—and I know this one will be very important to the Presiding Officer—is the transit benefit, the parity provision. We had a policy in place that provided parity between those who use transit to get to work and those who are provided parking spaces, and that parity expired. So we need to extend that provision so those who help us—help our energy policy in this country by using transit rather than driving a car, help those who drive cars by having fewer cars on the road so that they can get into work a little easier, and help our environment by taking cars off the road—receive a comparable tax break as those who drive their cars to work. That is another provision that is critically important in the EXPIRE Act and another reason we have to get it done.

The low-income housing tax credit—we have worked on this, and it is the most important tool we have for affordable housing in this country today. It is the No. 1 tool today. Senator CANTWELL and others have worked together to try to make it more effective with certain floors to guarantee a certain amount of help to different communities. We extend that policy in the EXPIRE Act so that we again are able to maintain the existing tools of today to help provide affordable housing by partnerships with the private sector. This is jobs. This is the private sector being incentivized to construct affordable housing in the community, privately owned, with the government as a partner. It is more cost-effective to the taxpayer and provides a greater stock of affordable housing. That policy will be in jeopardy if we cannot pass the underlying bill.

A section I have worked on with many of my colleagues is the extension of 179D, which deals with energy efficiency. We all talk about incentives so that when you build a building, you make it energy efficient. It is good policy for our energy and for our environment. We all know it makes us less dependent upon foreign sources of energy—all of the above.

This energy credit has been very, very effective in getting businesses and institutions to incorporate energy efficiency when they construct their buildings. So we want to extend that policy, absolutely, and I am proud of the role many of us have played in this area to get that extended.

We also want to improve that, and one of the provisions that is improved in the underlying bill is to help nonprofits take advantage of the 179D credit. It makes no difference whether it is a commercial or a nonprofit venture; we should be friendly to all from the point of view of being able to make buildings more efficient. That is what is incorporated in the underlying bill.

I must say I hope we will have an opportunity to offer some amendments, and I would hope, if we do, we can expand that to retrofitted buildings. We should be dealing not just with new construction, but we should also be dealing with older buildings from the point of view of giving incentives for retrofitting and saving energy, saving costs, making this country more efficient, creating more jobs and, by the way, also helping our environment. All of that can be done, and the EXPIRE bill helps us move forward on all those issues.

A provision I worked on with Senator SCHUMER on section 181 deals with film expensing rules. This is very important because filmmaking, whether it is for the theater or for TV, is a global competition. It is no longer whether it is going to be done in your State or in my State; it is whether it is going to be done in America or in another country. We have certain provisions in the code that make it easier for companies to locate in our States.

I am proud of the filmmaking industry in Maryland. It is very important to our economy, with literally hundreds of jobs dependent on that every week when we have new companies coming in. So extending this credit will help us in that regard, and that is in the underlying bill.

A provision I worked on with Senator PORTMAN, the work opportunity tax credit, is a credit we give to employers who hire very difficult-to-hire individuals. It has been very successful in getting jobs for people who would otherwise be unemployed. The company takes a risk, and they are compensated for it because it is a more vulnerable group of unemployed workers.

Senator PORTMAN and I have introduced an amendment to expand that to the long-term unemployed. When an employer is looking for someone to hire, they do not normally go to the long-term unemployed list. This will allow us to deal with that. It takes the pressure off the unemployment insurance system, and it provides incentives for job growth. That is in this bill.

I could go on and on. There are literally dozens and dozens of similar provisions that are extended and improved—extended and improved—in the underlying bill. That is what the Finance Committee did under the leadership of Senator WYDEN and Senator HATCH. We looked at all these provisions and asked: Which ones should we extend and which should we modify?

The next thing we want to do is to make permanent decisions. We know uncertainty is not healthy. We know we have to make permanent decisions on which credits should be there and which ones should not. We want to level the playing field as far as the Tax Code is concerned, but you can't get there unless this bill is first passed. This gives us a 2-year window in order to pass tax reform.

It is called EXPIRE for a reason—because we don't want to see temporary provisions in the Tax Code. We think we should make permanent judgments, and this bill gives us a chance to do that. So it will help us from the point of view of a more predictable tax policy. It will help us create jobs. There is no question about that. It does help small businesses. They are the ones most at risk by our failure to act. The uncertainty and the timing of this affects small businesses more. Based upon current policy, it would increase the tax burden of companies in this country and individuals. It is not only businesses but also individuals' tax burdens which will go up if we don't pass this bill.

This is not the time that any of this should be done. It makes more sense for us to move this bill forward. So let us find a way to do it. I might add that, traditionally, tax bills coming out of the Finance Committee are not an open process for amendments. I understand that. I think most of my colleagues understand that. So let us use reason to figure out a path forward so that at the end of the day we can pass this most important piece of legislation and help our economy grow.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

BARRON NOMINATION

Mr. GRASSLEY. Mr. President, I wish to speak about Harvard law professor David Barron's nomination to the First Circuit. I will do so by addressing some aspects of Professor Barron's record I find particularly troubling. At the end of the day, I believe his record reveals a nominee who simply doesn't belong on the Federal bench.

I will also update my colleagues on the efforts to withhold material relevant to this nominee from the American public, as well as, it appears, from the Senate.

Unfortunately, the White House continues its refusal to confirm that it has provided the full Senate with all Barron-related drone materials. As I stated 2 weeks ago, every Senator should be provided access to any and all Barron memos related to the drone issue, but before I turn to Barron's drone materials, I will discuss with my colleagues some of the other problematic aspects of this nominee's record.

I have reviewed the record. It is a record of legal reasoning and policy positions that are far outside the mainstream of legal thought. Professor Barron's record is even outside the mainstream of typically left-wing legal thought that we see in so many of our

law schools. It is a record that reveals Professor Barron's judicial philosophy. While that judicial philosophy may be appropriate for the ivory towers of academia, it has no place on a Federal appellate court. It is also a record that reveals Professor Barron's embrace of an approach to judging that is flatly inconsistent with what Federal judges are called upon to do.

Professor Barron has been very candid about his view on the role of the Federal courts. So from that standpoint, he is intellectually honest. It is fair to say he appears to view the Federal judiciary as a political branch of our government, not the judicial branch interpreting law instead of making law. I will recount some of the evidence which leads me to this conclusion.

Professor Barron has written that the courts are a ''significant wielder of power'' for ''progressive potential.''

What he appears to mean is that the courts should be used as an instrument to impose progressive policies on the American people, a role generally reserved to the legislative branch of government. These are of course policies that liberals couldn't otherwise impose through legislation because they are so far outside the political mainstream.

Professor Barron also appears to believe that progressives should mask their motives. He has written that candor and clarity have potential to ''obstruct progressive decisionmaking'' and that ''candor, clarity, and activism cannot co-exist.''

If that is what he believes, he is intellectually honest. His solution to this problem is, ''Candor and clarity seem a preferable choice for sacrifice'' to all-important progressive decisionmaking.

I would like my colleagues to stop and think about whether that kind of thinking is compatible with the role of a Federal judge. It is surely compatible with being a legislator but not being a judge. I think the answer is, quite simply, it is not because judges are called upon to decide cases based upon laws applied to the facts.

Consider this quote from the professor: ''Principled frankness has its place, but it need not always lie between the covers of the United States Reports.''

Let that sink in for a moment. The ''United States Reports'' he is referring to of course are the volumes containing the reported opinions of the U.S. Supreme Court.

So when we consider this statement together with his view that candor and clarity have the potential to ''obstruct progressive decisionmaking,'' it then becomes very clear he believes that liberal judges should hide their true intent.

That is an astounding proposition. It is unthinkable that someone who holds such a cynical view of the judiciary could obtain a lifetime appointment to one of the Nation's highest courts. What more assurance could my colleagues have that Professor Barron views the Federal judiciary merely as a tool for liberal policymaking?

Consider another statement. The professor has suggested that ''principled judicial interpretation may obstruct democratic constitutional politics.''

Is that the sort of person who should be judging instead of legislating? Comments such as these make it clear to me that this nominee has a ''whatever it takes'' judicial philosophy. He will aggressively do whatever it takes to reach his desired progressive policy outcomes.

Are any of my colleagues ready to vote for a judicial nominee who has hinted that ''principled judicial interpretation'' might occasionally need to take a backseat to political considerations? It is in a body such as we are in right now—the Senate—where political considerations and policy considerations rule according to what our constituents tell us, but that is not something a judge takes into consideration.

The professor is an unabashed advocate of what he calls ''progressive federalism.'' According to Professor Barron, the purpose of progressive federalism is to ''promote national and local relations consistent with a broader liberal political vision.''

Legislators are supposed to have political vision. Judges are supposed to judge and not have political vision because they don't run for office. Is that the type of individual we want on the Federal bench?

He has added:

> Federalism is what we progressives make of it. Rehnquist and his conservative colleagues have been making the most of it for more than a decade. It's time for progressives to do the same.

That is a pretty explicit example of his judicial philosophy. That philosophy is that the courts are an instrument of leftist policymaking. He sees the courts as basically a third political branch. That view of the Federal judiciary is totally incompatible with the limited role the Constitution assigns to the courts.

It should be clear to all Senators that if he is confirmed, the professor would bring an extreme progressive political agenda with him to the First Circuit. Political agendas belong in the Senate, not in the First Circuit.

His academic work gives us some indication of the kind of judge he would be. I would note that we had a hearing last week where some of my colleagues on our Judiciary Committee expressed their frustration about the nomination process. They remarked that every nominee who comes before a committee dutifully promises that he or she will objectively and dispassionately apply the law to the facts and respect precedent.

But my Democrat colleagues claim, after being confirmed, some nominees do not simply call the balls and the strikes. Let me assure my colleagues that we don't need to guess at what kind of judge the professor would be. It is not a mystery. He makes no secret of it.

Let's take another look at his academic work. It is clear the professor wouldn't be bound by the law when deciding cases. He's admitted as much. Professor Barron is an outcome-oriented legal thinker. He will select his desired progressive results and then find a way to get there. As I said, it is a ''whatever it takes'' judicial philosophy.

Here is what the professor said about precedent and the doctrine of stare decisis: ''Any good lawyer knows how to distinguish a precedent, if you need to.''

You see, in the professor's world view, precedent is just an inconvenient obstacle that can be easily dismissed on the road to his preferred outcome. Can any of us doubt that as a judge the professor would cleverly choose the precedents that he agrees with and ignore those he disagrees with?

Let me give you some more evidence. He lost a case before the Supreme Court 9 to 0. In other words, a unanimous vote against legal arguments that the professor advocated. He told the press that the Supreme Court ''got it wrong'' and that his brief ''was right after all.'' Imagine that, being voted down 9 to 0 and saying the Supreme Court got it wrong because in the professor's judgment every member of the Supreme Court got it wrong—but not our professor nominee. What does this statement suggest that we can expect from him when it comes to his respect for legal precedent? I don't think we can expect much. We cannot expect him to follow legal precedent because he disagrees with the Supreme Court even after they disagree with him 9 to 0.

There is more evidence the professor wouldn't be confined by the law in reaching the right outcome in a case. He has written that judicial decisionmaking, guided by statutes and legal precedent, is ''awfully cramped and technical, because it doesn't reflect a broader legal culture.''

Now, get back to basics. I thought the role of a judge was to apply the law, not to go fishing around for the ''broader legal culture'' until you find support for the result you want.

So I think we can be very clear. I don't expect President Obama to nominate conservatives to the Federal bench. When this President was elected, I didn't expect that a crop of young Scalias, Thomases, and Alitos would be filling the vacancies in our courts. Judicial nominees are a Presidential prerogative, and I voted for many of this President's judicial nominees who don't share my views on constitutional interpretation or federalism or the First Amendment. I voted for them because they were accomplished judges and lawyers who I believed could put their personal preferences aside once they took to the bench. I would and did expect when I voted for them to objectively rule based upon the law; or, if I wasn't absolutely sure, I was willing to give them the benefit of the doubt.

However, given the statements from this nominee's body of work that I have recounted today, as well as others, I can't understand how any of my colleagues could think the same about this nominee. In fact, I don't believe that I have seen a nominee who has been more candid about his or her desire to use the courts as an instrument of political ideology than Professor Barron.

This nominee's views are fundamentally incompatible with the limited constitutional role of the Federal courts. Here I want to go back to the people who wrote the Constitution and tell you what they really had in mind about the courts. In Federalist No. 78, Alexander Hamilton famously referred to the judicial branch of government as ''the least dangerous branch,'' because in the constitutional vision of our Founders the courts would have ''neither force nor will, but merely judgment.'' The professor's judicial philosophy turns that vision on its head. His record reveals a judicial philosophy that says progressive policy ends justify the legal means to get there. It is a judicial philosophy in which will trumps judgment. I don't share those views, and I cannot vote for this nominee or a nominee who does.

Now I will take a few minutes to update my colleagues on another aspect of this nominee that deals with the Barron drone materials and the White House's apparent refusal to provide this body with every one of the Barron-related drone materials.

Two weeks ago I came to the floor calling on the Obama administration to release any and all Office of Legal Counsel materials on the drone program that were written by or related to the professor. I also called upon the administration to comply with the Second Circuit's opinion last April ordering the Department of Justice to release a copy of the 41-page Barron drone memo in redacted form. We know this particular memo provides the legal arguments for targeted killing of American citizens overseas.

Yet the administration refuses to comply with the court order of the Second Circuit to make the arguments public, albeit in redacted form, and I haven't heard any indication that the administration intends to do that. Not only that, but the White House refuses to tell us whether they have made available to the full Senate all of the professor's drone-related materials.

Since 2010, the press has reported that Professor Barron wrote at least 2 memos that justified the Obama administration's drone policies while he was at the Office of Legal Counsel, and the Second Circuit said that there are at least 3 and possibly as many as 11 memos on the administration's drone policy. That much is very clear. What isn't clear is the scope of the professor's writings on the legality of the administration's drone program. We don't know this because the administration continues to ignore the bipartisan demands of Members of the Senate to make available all of those drone memos, particularly the ones written by the professor. We don't know how many of the drone memos exist because this administration refuses to even confirm whether they have provided all the drone memos to the full Senate. These materials are of crucial importance to the full Senate's consideration of this nominee.

I would recount for my colleagues what has happened thus far. On May 12, White House Press Secretary Jay Carney said that a single drone memo—what Carney referred to as the al-Awlaki memo—had been made available to the full Senate. But the Press Secretary was asked repeatedly how many drone memos exist, and he repeatedly dodged the question.

Here is what Mr. Carney said. Question: ''How many of them are there?'' Mr. Carney answered:

> What I can tell you is a couple of things. First, on the Senator Paul op-ed in which he does call for the memos to be made available to senators, we have made the memo available—the memo in question available before the vote.

Again, the White House is dodging here and just addressing one memo. So Mr. Carney was asked a second time at the news conference. The questioner said: ''How many memos are there? How many memos in which he [meaning Barron] was a principal author outlining the legal case?''

Mr. Carney answers: ''There was one memo in question that I have referred to, and that has been made available to U.S. Senators.''

So the questioner came back: ''Are there others?'' Mr. Carney, the Press Secretary, answers: ''Are there other memos that he [meaning Barron] drafted? I don't know.''

Now get this: An answer of ''I don't know'' to how many memos exist. That is as good as the White House can do when there is this high level of discussion about how many memos exist? Surely there are people scrambling around the White House to have an answer, even if they don't want to give the answer, because it is already obvious that they want to know what is going on themselves. But you still get the answer: I don't know how many memos there are. That is the best answer we can get from the White House after weeks of bipartisan requests from Senators to provide the full Senate with any and all of the professor's drone materials. ''I don't know'' is simply not an acceptable response from the White House.

Again, the White House seems to imply that it has provided all of the Barron-related memos on the drone program, but the fact of the matter is that they will not confirm that. Unfortunately, it appears many Democrats as well as members of the media have fallen for this ruse. The Second Circuit mentioned at least three memos that were responsive to the New York Times Freedom of Information Act request for materials on killing Americans abroad. So we know that there are multiple drone memos. That is a matter of public record.

Has anyone in this administration bothered to read the Second Circuit's opinion? We know that there are multiple memos on the drone program—as many as 11. As the New York Times has reported since 2010, there are at least two drone memos that this nominee has written. But there may be more. The best answer we have gotten so far is ''I don't know.''

On May 14 the White House changed its tune just slightly. Another White House spokesperson told the press that the White House said it had provided all of the Barron drone materials related to ''U.S. citizens.''

But, again, the White House hasn't said whether there are additional materials that the professor wrote on the drone program. It is not at all clear to me why this administration thinks it has done its duty to provide the full Senate with materials that are crucial to our consideration of this nominee's fitness for a lifetime appointment, particularly considering the fact that the White House should make at least that one memo available to the public. It is similar to when President Jackson didn't like what John Marshall ruled in a particular case; the Chief Justice ruled, now let him enforce it. Are we going to have that respect for the circuit court opinion that says the White House ought to release to the public this decision? Is that the oath the President of the United States took to uphold the Constitution?

Why does this administration think that any Senator would vote on a judicial nomination without having reviewed the nominee's work on such an important topic?

Moreover, as I mentioned 2 weeks ago, the Freedom of Information Act litigation in the Second Circuit is still ongoing. Whatever responsive memos that the administration has not yet released may become public in the future. Again, are my colleagues ready to vote on this nomination without having reviewed all relevant writings of the nominee? Are my colleagues ready to shrug their shoulders and accept the White House Press Secretary's statement when he says, ''I don't know'' how many memos there are? Are my colleagues prepared to face their constituents and explain that they didn't bother to track down this controversial nominee's complete record on this topic before they voted?

The Constitution requires every Senator to provide advice and consent on a nominee. We cannot satisfy that obligation if this administration continues to withhold the professor's writings. At the very least, the White House should say definitively that no additional Barron-related drone materials exist. What are they hiding?

The Second Circuit says the professor is the author of the memo that sets forth the legal framework used to justify killing Americans overseas. What

else has he written that the administration refuses to release to the full Senate? The Members of this body will never know until the administration ends the obstruction and provides access to each and every one of the memos on drones that Professor Barron has written. Again, the administration should comply with the Second Circuit's order requiring them to make the opinion of the Office of Legal Counsel public, even if it is with redactions.

Why the rush to have this vote before the public gets to read the legal reasoning? Why is the other side so afraid of waiting to vote until their constituents read this nominee's legal rationale for the targeted killing of American citizens?

It is time for the White House and the administration to stop playing games regarding how many of the professor's memos there are. It is time for the White House to stop hiding from the public the materials they have been ordered by the court to disclose.

I will vote against this nominee and urge my colleagues to do the same.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SCHATZ). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Mr. President, under the order I ask unanimous consent for 20 minutes to address the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

BENGHAZI

Mrs. BOXER. Mr. President, I rise to urge Senator REID to say a very clear no to the request by 37 Republicans that we create a new Senate select committee on Benghazi. I was astounded to see 37 Republicans—many of whom have worked on this issue with me and Senator MENENDEZ on the Foreign Relations Committee—essentially make this request at a time when we have so much information already on Benghazi. To spend the funds for this separate committee—in addition to the one the House has set up—doesn't make sense unless you believe, as I do, that this is all a political witch hunt.

The attacks of September 11, 2012, in Benghazi that took the lives of four Americans, including Ambassador Chris Stevens, were a tragedy. After such a tragedy, we should all come together and make certain that this never happens again, but we should not play politics. Instead of focusing and agreeing on how we can prevent future attacks against U.S. personnel overseas—as they have had an opportunity to do by adding more funding for diplomatic posts to protect our people—the Republicans want to turn the Benghazi-Libya tragedy into a scandal. That is scandalous. The way they are handling this issue is a scandal.

The American people are smart. I have seen recent polls, and they get it. More than 60 percent—and I will look that up again—say this is all about politics; it is not about anything else.

I wish to explain to the American people what we have done about this tragedy. Over the last 20 months, these attacks have received unprecedented scrutiny. I have a chart I wish to share that explains it.

We have had nine House and Senate investigations on Benghazi. We have conducted 17 hearings. We have held 50—5–0—briefings. We have conducted 25 interviews, issued 8 subpoenas, and reviewed 25,000 pages of documents. There are 25,000 pages of documents that have been reviewed. We have had six reports released. All of these little boxes represented here show the various hearings, the various committees, the various briefings, the various documents. We look at this chart and realize this is unprecedented.

Nine different House and Senate committees have investigated the attacks. Seventeen hearings have been conducted. Fifty briefings have taken place. Twenty-five transcribed interviews have been conducted. Eight subpoenas have been issued. More than 25,000 pages of documents have been reviewed, and 6 congressional reports have been released.

I have gone over this a couple of times this morning because I want to make sure the RECORD reflects all of this accurately.

In case that is not enough to convince the people of this country what a witch hunt the Republicans are on, I will show my colleagues a partial viewing of the materials, if my colleagues will excuse me while I bend down. That is just one stack of binders. All of these binders are filled—filled—with all of the information that came out of these reports.

So before people get up here and say, Oh, we need more information, how about reading what we already have: stacks and stacks of information.

Within these binders are the reports and the testimony Congress has already heard over the last 20 months, but my Republican friends would have us believe none of this happened and none of what the chart depicts happened. They are not satisfied with exhaustive reviews, much of which was conducted by House Republican committee Chairs, by the way. They walk away from their own work because they are playing politics. They should be proud of the work they did, but this isn't about the work they did. It is about playing politics. It is about hurting people—hurting people.

Benghazi was a tragedy. We lost four beautiful, patriotic Americans. Don't turn it into a scandal.

I guess these filled binders were not enough for them in the House of Representatives.

I will take these down now.

This wasn't enough for them: 9 committees, 17 hearings, 50 briefings, 25 interviews, 8 subpoenas, 25,000 pages of documents, 6 reports. All of this was not enough for them. The House set up a new select committee and, again, 37 of my Republican friends now want their own select committee. That is right; they want two new committees to investigate what has been investigated, investigated, and investigated.

A person doesn't need a degree in political science to know what a political witch hunt looks like. All a person needs to do is to look at this and a person understands. This is a campaign tactic by my Republican colleagues to gin up their base ahead of the midterm election and, by the way, look ahead to 2016, where they are filled with anxiety at the thought that the former Secretary of State, Hillary Clinton, may be the Democratic nominee.

This is a campaign tactic, this call for these committees. We know Republicans have been actively fundraising off this tragedy. That is right; they have been fundraising off this tragedy. When Speaker BOEHNER was asked about it, all he did was walk away from the question. I watched that interview. It was painful.

They said: Aren't you going to stop the fundraising?

He said: We are just interested in the facts.

They said: Aren't you going to stop this fundraising?

He said: We are just interested in the facts.

Answer the question. We know it is a political witch hunt because before he was minding his Ps and Qs, the House Select Committee chairman suggested the administration should be put on ''trial'' over Benghazi—put on trial.

We also know the House GOP refused House minority leader NANCY PELOSI's offer to put an equal number of Democrats and Republicans on the panel. Oh, no, because it is a political witch hunt and they want total control over that committee.

Here is one issue I know the select committee won't be investigating in the House, and that is the budget cuts House Republicans made to security at our embassies and at our consulates, at our diplomatic posts around the world—cuts that Republicans actually boasted about making. Here in the Senate, we have tried to get through an embassy security bill by unanimous consent and they objected I don't know how many times—a couple of times.

So we are not going to see an investigation into why the Republicans thought it was wise to cut spending on embassy security. Oh, no, they won't look at that. One Congressman in the House was asked by CNN whether the GOP cut embassy security, because the reporter was incredulous, and this Congressman said: Absolutely. Look, we have to make priorities and choices. You have to prioritize things. So, clearly, this particular Member of Congress was proud they cut embassy security; but, believe me, they are not